



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

CRIMINAL REVISION NO. 139 OF 2018

JOSEPH KIREMA KIRUNGU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(From original conviction and sentence in Criminal Case No. 557 of 2016 of the Principal Magistrate's Court at Marimanti delivered by S.M. Nyaga - (R.M) on 4/8/2016).

RULING

1. **JOSEPH KIREMA KIRUNGU**, the applicant herein was charged with the offence of stealing stock contrary to **Section 278** of the **Penal Code**. The particulars of the offence were that on 18th July 2016 at Riakirundi village Marimanti Location, the applicant stole two goats valued at Kshs.8,000/- the property of Regina Kanyumba.
2. The applicant admitted the charge and was convicted on his own plea of guilty and sentenced to serve 7 years imprisonment.
3. The applicant has now applied for revision of his sentence under **Sections 362** and **364** of the **Criminal Procedure Code** on the grounds that he was a first offender and a bread winner on his family. He has further stated that he is remorseful and fully rehabilitated after serving 2 years in prison.
4. This court did pursuant to the provisions of **Section 362** of the **Criminal Procedure Code** called for the lower court file and upon perusal, I am satisfied that the proceedings against the applicant were proper and legal. The offence for which the applicant was charged attracts a penalty of upto 14 years imprisonment. The applicant was sentenced to serve 7 years imprisonment by the trial court upon exercising its discretion under **Section 26(2)** of the **Penal Code**. This court cannot interfere with such exercise of discretion unless it is shown that the trial court took into consideration irrelevant factors and/or failed to take into account relevant mitigating factors.
5. This court has noted two factors that I consider relevant and which were not factored in;
 - a) The complainant is the mother to the applicant. She appeared both in the trial court and in this court indicating that she had reconciled with her son and had forgiven him.
 - b) The applicant was a first offender and remorseful.
6. The court was told by the applicant's mother that she had forgiven him and wanted him home in order to help her and the child left behind by the applicant. In order to foster reconciliation and re union of the family, this court finds that it is desirable to allow this application which I appear do.

The applicant's 7 years sentence is hereby set aside and **Section 364** of the **Criminal Procedure Code** and in its place, the applicant is sentenced to a period he has already served in jail as he appears to have been rehabilitated fully. He is advised to keep off crime and engage in lawful and useful economic activities to help his aging mother and his own children.

Dated, signed and delivered at Chuka this 28th day of November, 2018.

R.K. LIMO

JUDGE

28/11/2018

Ruling dated, signed and delivered in the open court in presence of Machirah for Respondent and the applicant in person.

R.K. LIMO

JUDGE

28/11/2018